

THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

WHITNEY BILYEU, individually and as Chair §  
of the LIBERTARIAN PARTY OF TEXAS; §  
MARK ASH; STEPHANIE BERLIN; JOE §  
BURNES; ARTHUR DIBIANCA; KEVIN §  
HALE; DESARAE LINDSEY; ARTHUR §  
THOMAS IV; MARK TIPPETTS; and §  
LIBERTARIAN PARTY OF TEXAS, §

*Plaintiffs,* §

NO. 1:21-CV-01089-RP

v. §

JOHN B. SCOTT, in his official capacity as the §  
Secretary of State of the State of Texas, and §  
JOSE A. “JOE” ESPARZA, in his official §  
capacity as the Deputy Secretary of State of the §  
State of Texas, §

*Defendants.* §

**Unopposed Motion to Abate & Continue Case**

Plaintiffs Whitney Bilyeu, individually and as Chair of the Libertarian Party of Texas;  
Mark Ash; Stephanie Berlin; Joe Burnes; Arthur DiBianca; Kevin Hale; Desarae Lindsey; Arthur  
Thomas IV; Mark Tippetts; and the Libertarian Party of Texas file their *Unopposed Motion to  
Abate & Continue Case* as follows:

**Introduction & Relief Requested**

1. This is a ballot access case challenging a Texas law requiring the Libertarians to  
pay a filing fee to the State’s General Fund so that they might be receive their party’s nomination  
and appear on the general election ballot. Plaintiffs have sought declaratory and injunctive relief  
under the First and Fourteen Amendments and 42 U.S.C. Section 1983.

2. The Legislature is likely to pass new laws this session that will change the nature of most (but not all) of Plaintiff's claims.

3. The current Scheduling Order contemplates amending pleadings and adjusting the schedule to account for changes in the law. (*See* Dkt. # 44 at 3.)

4. Plaintiffs ask the Court to abate the case until August 1, 2023, vacate the current scheduling order, continue the current September 5, 2023 bench trial, and set a scheduling conference in August, to enter a new scheduling order.

5. Defendants are unopposed to this motion.

### **Facts**

6. The main statute that Plaintiffs challenged was Texas Election Code Section 181.0311, enacted under Acts 2021, 87th Leg., R.S., Ch. 149 (S.B. 2093). Arguably, the filing fee under S.B. 2093 was a "form, content, procedure" requirement, which made the payment (or non-payment) of the filing fee subject to challenges under a specific set of statutes.

7. In the current Legislative Session there are several bills that, if made law, will affect the filing fee analysis for the Libertarians. For example, Senate Bill 994, just through its third reading, appears to make the payment of a filing fee an *eligibility* requirement, which would also change the enforcement mechanisms. A true and correct copy of the engrossed version of S.B. 994 is attached as Exhibit A.

### **Argument & Authority**

8. Plaintiffs ask the Court to exercise its discretion and abate this case until August 1, 2023, to allow Plaintiffs to analyze changes to the Election Code that will result from this *Legislative Session*. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (discussing implied and

inherent powers of courts). Granting this abatement will serve judicial economy, as there is already an evidentiary record in this matter, and although parts of the case will change with the filing fee, Plaintiff's claims relating to the difference in the *use* of the filing fee will remain the same. Adapting this case to changes in the law will be more efficient than starting a new one, which would likely end up in this very court, with the same plaintiffs, and most likely the same attorneys.

9. Defendants are not opposed to this motion.

10. This request is not made for delay only, so that justice will be done.

**Prayer**

For these reasons, Plaintiffs ask that the Court GRANT this motion, abate the case until August 1, 2023, vacate the current scheduling order, continue the bench trial setting, and set the case for a scheduling conference.

Dated: April 28, 2023

Respectfully submitted,

/s/ Jared G. LeBlanc

Jared G. LeBlanc  
Attorney-in-Charge  
Texas Bar No.24046279  
jleblanc@leblancflanery.com  
Brandon A. O'Quinn  
Texas Bar No. 24092914  
boquinn@leblancflanery.com

LEBLANC FLANERY PLLC  
2929 Allen Parkway, Suite 200  
Houston, Texas 77019  
(346) 315-1150

**Attorneys for Plaintiffs**

**Certificate of Conference**

I certify that I have conferred with Defendants' counsel Mr. Jonathan Stone by phone and email. Mr. Stone has confirmed that Defendants are unopposed to this motion.

/s/ Jared G. LeBlanc

Jared G. LeBlanc

**Certificate of Service**

I certify that a true and correct copy of this *Joint Motion to Abate & Continue Case* was forwarded to all counsel of record by electronic service on April 28, 2023.

/s/ Jared G. LeBlanc

Jared G. LeBlanc